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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,971	03/04/2002	Carl A. Caspers	33062.PM15891	1772

7590

03/25/2003

Gerald E. Helget  
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EXAMINER

WILLSE, DAVID H

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/090,971		CASPER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Dave Willse		3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 and 15 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2&3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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In the Information Disclosure Statements, certain references were not considered because a concise explanation of the relevance (37 C.F.R. § 1.98(a)(3)) and/or a complete copy (37 C.F.R. § 1.98(a)(2)) was not presented.

Claims 3 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 3, it is not clear whether "ten inches of mercury" represents absolute pressure or pressure below that of the atmosphere. In claim 13, the last limitation (lines 5-6) is redundant (line 3).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4, and 8 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Slemker et al., US 6,287,345 B: Figure 1; column 6, lines 9-12 and 44-48; column 4, lines 20-26.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slemker et al., US 6,287,345 B. Regarding claim 9, a vacuum reservoir, well known in the art, in conjunction with the "electronically or hydraulically controlled device" (column 6, line 48) would have been obvious in order to conserve power. Regarding claim 10, a weight-actuated vacuum pump was well known and would have been obvious in order to avoid the need for external power altogether and would have been motivated by column 5, lines 45-53, of Slemker et al.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slemker et al., US 6,287,345 B1, in view of Fishman et al., US 5,007,937. An annular seal between the liner and the socket would have been obvious from the Fishman teaching in order to accommodate, for example, an amputee who wears a stump sock, with further motivation having been provided by the need for a seal, as expressed by Slemker et al. at column 6, line 11, and by the advantages set forth by Fishman et al. at column 2, lines 3-5 and 10-11, for example.

Claims 3, 5, 6, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slemker et al., US 6,287,345, in view of Caspers, US 5,735,906. Regarding claim 3, Slemker et al. are silent as to particular values for the vacuum, but pressures lower than ten inches of

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mercury below atmospheric pressure were known in the art, as seen from column 7, lines 25-27, of Caspers, and would have been obvious for Slemker et al. particularly since vacuum is used to don the prosthetic limb (Slemker et al.: column 6, lines 49-53), with one of ordinary skill having been left to devise a range of vacuum levels. Regarding claim 5, such a suspension sleeve was likewise well known in the art (e.g., Caspers: column 6, lines 30-35) and would have been an obvious substitute or supplement as a seal and/or attachment means. Regarding claim 6, the liner being a non-foamed, nonporous polyurethane would have been an obvious variant in view of its common use and advantages (e.g., Caspers: column 6, lines 47-55). Regarding claim 11, a thin nylon sheath would have been obvious in order to assist donning (e.g., Caspers: column 7, lines 5-9).


Claims 2 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 14-15 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is (703) 308-2903. The supervisor, Corrine McDermott, can be reached at (703) 308-2111. The receptionist's phone number is (703) 308-0858, and the main FAX numbers are (703) 305-3591, 3590.

dhw: D. Willse  
March 24, 2003

  
**DAVE WILLSE**  
**PRIMARY EXAMINER**  
**ART UNIT 3738**